

**Effective 1/1/2020**

**Part 10**  
**Affiliated Business in Title Insurance**

**31A-23a-1001 Definitions.**

As used in this part:

- (1) "Affiliated business" means the gross transaction revenue of a title entity's title insurance business in the state that is the result of an affiliated business arrangement.
- (2) "Affiliated business arrangement" means the same as that term is defined in 12 U.S.C. Sec. 2602, except the services that are the subject of the arrangement do not need to involve a federally related mortgage loan.
- (3) "Applicable percentage" means:
  - (a) on February 1, 2020, through January 31, 2021, 0.5%;
  - (b) on February 1, 2021, through January 31, 2022, 1%;
  - (c) on February 1, 2022, through January 31, 2023, 1.5%;
  - (d) on February 1, 2023, through January 31, 2024, 2%;
  - (e) on February 1, 2024, through January 31, 2025, 2.5%;
  - (f) on February 1, 2025, through January 31, 2026, 3%;
  - (g) on February 1, 2026, through January 31, 2027, 3.5%;
  - (h) on February 1, 2027, through January 31, 2028, 4%; and
  - (i) on February 1, 2028, through January 31, 2029, 4.5%.
- (4) "Associate" means the same as that term is defined in 12 U.S.C. Sec. 2602.
- (5) "Division" means the Division of Real Estate created in Section 61-2-201.
- (6) "Essential function" means:
  - (a) examining and evaluating, based on relevant law and title insurance underwriting principles and guidelines, title evidence to determine the insurability of a title and which items to include or exclude in a title commitment or title insurance policy to be issued;
  - (b) preparing and issuing a title commitment or other document that:
    - (i) discloses the status of the title as the title is proposed to be insured;
    - (ii) identifies the conditions that must be met before a title insurance policy will be issued; and
    - (iii) obligates the insurer to issue a title insurance policy if the conditions described in Subsection (6)(b)(ii) are met;
  - (c) clearing underwriting objections and taking the necessary steps to satisfy any conditions to the issuance of a title insurance policy;
  - (d) preparing the issuance of a title insurance policy; or
  - (e) handling the closing or settlement of a real estate transaction when:
    - (i) it is customary for a title entity to handle the closing or settlement; and
    - (ii) the title entity's compensation for handling the closing or settlement is customarily part of the payment or retention from the insurer.
- (7) "New or newly affiliated title entity" means a title entity that:
  - (a) is licensed as a title entity for the first time on or after May 14, 2019; or
  - (b)
    - (i) is licensed as a title entity before May 14, 2019; and
    - (ii) enters into an affiliated business arrangement for the first time on or after May 14, 2019.
- (8) "Producer" means the same as the term "person who is in a position to refer settlement service business" is defined in 12 C.F.R. Sec. 1024.15(c).

- (9) "RESPA" means the federal Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.
- (10) "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules promulgated thereunder.
- (11) "Sufficient capital and net worth" means:
  - (a) for a new or newly affiliated title entity:
    - (i) \$100,000 for the first five years after becoming a new or newly affiliated title entity; or
    - (ii) after the first five years after becoming a new or newly affiliated title entity, the greater of:
      - (A) \$50,000; or
      - (B) on February 1 of each year, an amount equal to 5% of the title entity's average annual gross revenue over the preceding two calendar years, up to \$150,000; or
  - (b) for a title entity licensed before May 14, 2019, who is not a new or newly affiliated title entity:
    - (i) for the time period beginning on February 1, 2020, and ending on January 31, 2029, the lesser of:
      - (A) an amount equal to the applicable percentage of the title entity's average annual gross revenue over the two calendar years immediately preceding the February 1 on which the applicable percentage first applies; or
      - (B) \$150,000; and
    - (ii) beginning on February 1, 2029, the greater of:
      - (A) \$50,000; or
      - (B) an amount equal to 5% of the title entity's average annual gross revenue over the preceding two calendar years, up to \$150,000.
- (12) "Title entity" means:
  - (a) a title licensee as defined in Section 31A-2-402; or
  - (b) a title insurer as defined in Section 31A-23a-415.
- (13)
  - (a) "Title evidence" means a written or electronic document that identifies and describes or compiles the documents, records, judgments, liens, and other information from the public records relevant to the history and current condition of a title to be insured.
  - (b) "Title evidence" does not include a pro forma commitment.

Amended by Chapter 448, 2020 General Session

**31A-23a-1002 Regulation of affiliated business -- Applicable law.**

- (1) Except as provided in this part, for purposes of state law, Section 8 of RESPA governs an affiliated business arrangement involving a title entity.
- (2) The division shall enforce the provisions of this part, including Section 8 of RESPA.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules necessary to implement the provisions of this part.

Enacted by Chapter 475, 2019 General Session

**31A-23a-1003 Affiliated business arrangements.**

- (1) An affiliated business arrangement between a person and a title entity violates Section 8 of RESPA for purposes of state law if:
  - (a) the title entity does not have sufficient capital and net worth in a reserve account in the title entity's name; or
  - (b) more than 70% of the title entity's annual title insurance business is affiliated business on or after the later of:

- (i) two years after the title entity begins an affiliated business arrangement; or
  - (ii) June 1, 2021.
- (2) In addition to Subsection (1), the division may find that an affiliated business arrangement between a person and a title entity violates Section 8 of RESPA after evaluating and weighing the following factors in light of the specific facts before the division:
- (a) whether the title entity:
    - (i) is staffed with the title entity's own employees to conduct title insurance business;
    - (ii) manages the title entity's own business affairs;
    - (iii) has a physical office for business that is separate from any producer's or associate's office and pays market rent;
    - (iv) provides the essential functions of title insurance business for a fee, including incurring the risks and receiving the rewards of any comparable title entity; and
    - (v) performs the essential functions of title insurance business itself;
  - (b) if the title entity contracts with another person to perform a portion of the title entity's title insurance business, whether the contract:
    - (i) is with an independent third party; and
    - (ii) provides payment for the services that bears a reasonable relationship to the value of the services or goods received; and
  - (c) whether the person from whom the title entity receives referrals under the affiliated business arrangement also sends title insurance business to other title entities.

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**31A-23a-1004 Annual affiliated business report.**

Before March 1 each year, each new or newly affiliated title entity shall submit a report to the division that:

- (1) contains the following for the preceding calendar year:
  - (a) the name and address of any producer or associate that owns a financial interest in the new or newly affiliated title entity;
  - (b) for each producer and associate identified under Subsection (1)(a), the percentage of the new or newly affiliated title entity's affiliated business that is the result of an affiliated business arrangement with the producer or associate;
  - (c) a description of any affiliated business arrangement the new or newly affiliated title entity has with a person other than a producer or associate identified under Subsection (1)(a);
  - (d) the percentage of the new or newly affiliated title entity's annual title insurance business that is affiliated business;
  - (e) proof of sufficient capital and net worth; and
  - (f) any other information required by the division by rule; and
- (2) is certified by an officer of the new or newly affiliated title entity that the information contained in the report is true to the best of the officer's knowledge, information, and belief.

Amended by Chapter 448, 2020 General Session

**31A-23a-1005 Investigations.**

- (1) To enforce the provisions of this part, including Section 8 of RESPA, the division may conduct a public or private investigation within or outside of the state as the division considers necessary to determine whether a person has violated a provision of this part, including Section 8 of RESPA.

- (2) For the purpose of an investigation described in Subsection (1), the division may:
  - (a) administer an oath or affirmation;
  - (b) issue a subpoena that requires:
    - (i) the attendance and testimony of a witness; or
    - (ii) the production of evidence;
  - (c) take evidence;
  - (d) require the production of a book, paper, contract, record, other document, or information relevant to the investigation; and
  - (e) serve a subpoena by certified mail.
- (3)
  - (a) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.
  - (b) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.

Enacted by Chapter 475, 2019 General Session

**31A-23a-1006 Disciplinary action.**

- (1) Subject to the requirements of Section 31A-23a-1007, the division may impose a sanction described in Subsection (2) against a person if the person is:
  - (a) a title entity or a person previously licensed as a title entity for an act the person committed while licensed; and
  - (b) violates a provision of this part, including Section 8 of RESPA.
- (2) The division may, against a person described in Subsection (1):
  - (a) impose an educational requirement;
  - (b) impose a civil penalty in an amount not to exceed \$5,000 for each violation;
  - (c) do any of the following to a title entity:
    - (i) suspend;
    - (ii) revoke; or
    - (iii) place on probation;
  - (d) issue a cease and desist order; or
  - (e) impose any combination of sanctions described in this Subsection (2).
- (3)
  - (a) If the presiding officer in a disciplinary action under this part issues an order that orders a fine as part of a disciplinary action against a person, including a stipulation and order, the presiding officer shall state in the order the deadline, that is no more than one year after the day on which the presiding officer issues the order, by which the person shall comply with the fine.
  - (b) If a person fails to comply with a stated deadline:
    - (i) the person's license is automatically suspended:
      - (A) beginning the day specified in the order as the deadline for compliance; and
      - (B) ending the day on which the person complies in full with the order; and
    - (ii) if the person fails to pay a fine required by an order, the division may begin a collection process:
      - (A) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
      - (B) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

- (4) The division may delegate to an administrative law judge the authority to conduct a hearing under this part.

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**31A-23a-1007 Adjudicative proceedings -- Review -- Coordination with department.**

- (1)
  - (a) Before an action described in Section 31A-23a-1006 may be taken, the division shall:
    - (i) give notice to the person against whom the action is brought; and
    - (ii) commence an adjudicative proceeding.
  - (b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the presiding officer determines that a title entity has violated a provision of this part, including Section 8 of RESPA, the division may take an action described in Section 31A-23a-1006 by written order.
- (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person against whom action is taken under this part may seek review of the action by the executive director of the Department of Commerce.
- (3) If a person prevails in a judicial appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to that individual or entity as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.
- (4)
  - (a) An order issued under this section takes effect 30 days after the service of the order unless otherwise provided in the order.
  - (b) If a person appeals an order issued under this section, the division may stay enforcement of the order in accordance with Section 63G-4-405.
- (5)
  - (a) Except as provided in Subsection (5)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:
    - (i) four years after the day on which the violation is reported to the division; or
    - (ii) 10 years after the day on which the violation occurred.
  - (b) The division may commence a disciplinary action under this part after the time period described in Subsection (5)(a) expires if:
    - (i)
      - (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and
      - (B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or
    - (ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (5)(a).
- (6)
  - (a) Within two business days after the day on which a presiding officer issues an order under this part that suspends or revokes a title entity's license, the division shall deliver written notice to the department that states the action the presiding officer ordered against the title entity's license.
  - (b) Upon receipt of the notice described in Subsection (6)(a), the department shall implement the action ordered against the title entity's license.

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